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**Of Attorneys for Defendant Clackamas County**

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**RONNIE SMITH,**

Plaintiff,

v.

**CLACKAMAS COUNTY, BENJAMIN  
FRAZIER, and DAVID HEIMBUCK, et al.,**

Defendant.

Case No. 3:16-cv-01691-SI

ANSWER TO SECOND AMENDED  
COMPLAINT AND AFFIRMATIVE  
DEFENSES

DEMAND FOR JURY TRIAL

**ANSWER**

COMES NOW Defendants herein, by and through counsel, and, for their  
ANSWER TO SECOND AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES,  
pleads as follows:

1.

To the degree that the assertions set forth in paragraph 1 of the Second  
Amended Complaint are allegations that require a responsive pleading, defendants  
deny the allegations.

2.

In response to the allegations contained in paragraph 2 of plaintiff's Second Amended Complaint, Defendants admit the allegations, Jurisdiction is proper under 28 U.S.C. §§ 1331(a) and 1343, and 42 U.S.C. § 1983.

3.

In response to the allegations contained in paragraph 3 of plaintiff's Second Amended Complaint, Defendants admit the allegations. Venue is proper in the District of Oregon pursuant to 28 U.S.C. § 1391(b).

4.

In response to the allegations contained in paragraph 4 of plaintiff's Second Amended Complaint, Defendants are without information or knowledge to either admit or deny the allegations.

5.

In response to the allegations contained in paragraphs 5 through 7 of plaintiff's Second Amended Complaint, Defendants admit the allegations.

6.

In response to the allegations contained in paragraph 8 plaintiff's Second Amended Complaint, Defendants deny that there was no reasonable suspicion to Mr. Smith had committed a crime. Defendants admit the remaining allegations of paragraph 8.

7.

In response to the allegations contained in paragraph 9 of plaintiff's Second Amended Complaint, Defendants are without information or knowledge to either admit

or deny whether plaintiff was publicly embarrassed. Defendants admit that plaintiff was detained and not allowed to leave while Defendants verified his identity and investigated plaintiff's actions that lead to the mall employee contacting defendants to request that they contact plaintiff.

8.

In response to the allegations contained in paragraph 10 of plaintiff's Second Amended Complaint, Defendants admit that plaintiff was arrested for offensive littering, and deny the remaining allegations.

9.

In response to the allegations contained in paragraphs 11 through 15 of plaintiff's Second Amended Complaint, Defendants deny the allegations.

10.

Except as specifically admitted herein, Defendants deny each and every allegation in the Second Amended Complaint. Defendants reserve the right to amend this Answer and to assert additional defenses based on further investigation and discovery. Clackamas County alleges the following as separate affirmative defenses without assuming the plaintiff's burden of proof on any claim, where such burden is otherwise on the Plaintiff under applicable procedural law.

#### AFFIRMATIVE DEFENSES

#### FIRST AFFIRMATIVE DEFENSE

11.

Plaintiff's complaint fails to allege ultimate facts sufficient to state a claim for violations of the Fourth Amendment because plaintiff fails to state facts sufficient to

allege that he was stopped without reasonable suspicion and arrested without probable cause.

## SECOND AFFIRMATIVE DEFENSE

12.

Plaintiff's complaint fails to allege ultimate facts sufficient to state a claim for violations of the Fourth Amendment because plaintiff fails to state facts sufficient to allege that the policy or custom of Defendant Clackamas County was enacted or maintained with deliberate indifference to an almost inevitable constitutional injury.

## THIRD AFFIRMATIVE DEFENSE

13.

Plaintiff failed to mitigate his damages, if any, and failed to take reasonable care and diligence to avoid harm or loss that could have reasonably been prevented by such efforts. Plaintiff refused to obey a lawful request for information and as a result was reasonably detained, his decision to urinate on himself is not the result of defendants' actions or omissions.

## FOURTH AFFIRMATIVE DEFENSE

14.

Plaintiff's claims are subject to the defense of qualified immunity, defendants actions were reasonable and conducted in good faith.

## FIFTH AFFIRMATIVE DEFENSE

15.

Plaintiff's claims are subject to the defenses of reasonable suspicion to stop and probable cause to arrest plaintiff.

WHEREFORE, having answered and asserted Affirmative Defenses, Defendant Clackamas County prays for judgment in its favor:

- 1) Dismissing the Plaintiff's Complaint with prejudice;
- 2) Awarding the Defendants those costs and disbursements necessarily incurred in the defense of this action;
- 3) Such additional relief as the Court may determine to be just, necessary, and equitable under the circumstances.

Respectfully submitted this 27<sup>th</sup> day of July, 2017.

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